

Message Text

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PAGE 01 GENEVA 02274 151121 Z

53

ACTION IO-13

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CIAE-00 DODE-00 PM-09 H-02 INR-10 L-03 NSAE-00 NSC-10

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FM USMISSION GENEVA

TO SECSTATE WASHDC 9310

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C O N F I D E N T I A L GENEVA 2274

E. O. 11652: GD

TAGS: PFOR, UN

SUBJECT: DEFINITION OF AGGRESSION COMMITTEE: PRIORITY AND
INTENT

1. DURING MEETING PM MAY 14 CG III CONTINUED ITS CON-
SIDERATION OF PRIORITY AND INTENT, FOCUSING INITIALLY ON
COMPROMISE PROPOSALS TABLED BY GUYANA (GENEVA 2259) AND OTHERS.
MEXICO CONTINUED TO TAKE EXTREME POSITION, REJECTING ANY
INCLUSION OF INTENT PRINCIPLE. HOWEVER, MEXICAN
REP INDICATED HE WAS WILLING CONSIDER DELETION OF
BOTH PRIORITY AND INTENT FROM DEFINITION, SINCE, IN HIS
VIEW, PRIORITY ALREADY AMPLY COVERED IN UN CHARTER. SPAIN
AGREED DELETION OF BOTH CONCEPTS MIGHT BE POSSIBLE, BUT
FRANCE (CHAUMONT) REACTED VERY NEGATIVELY, SAYING HE
COULD NOT ACCEPT DEFINITION WHICH DID NOT CONTAIN PRIORITY
PRINCIPLE.

2. WG CHAIRMAN BROMS TABLED USEFUL COMPROMISE FORMULATION.
HOWEVER, NON- ALIGNED AND OTHER DELS REACTED NEGATIVELY
TO PROPOSAL, AND IT RECEIVED NO FURTHER ATTENTION. TEXT
FOLLOWS: " WITHOUT PREJUDICE TO THE POWERS AND DUTIES OF
THE SECURITY COUNCIL, UNDER CHAPTER VII OF THE CHARTER, TO
CONFIDENTIAL

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PAGE 02 GENEVA 02274 151121 Z

TAKE INTO ACCOUNT THE OTHER RELEVANT CIRCUMSTANCES OF EACH PARTICULAR CASE IN DETERMINING THE EXISTENCE OF ANY ACT OF AGGRESSION, SPECIAL ATTENTION SHALL BE PAID IN PARTICULAR TO THE QUESTION WHICH STATE RESORTED TO THE USE OF ARMED FORCE FIRST AND ALSO TO THE QUESTION WHETHER THE ACT WAS COMMITTED WITH AN AGGRESSIVE INTENT."

3. LATE IN DAY GUYANA TABLED ANOTHER COMPROMISE PROPOSAL. TEXT FOLLOWS: " THE FIRST DELIBERATE USE OF ARMED FORCE IN CONTRAVENTION OF THE UNITED NATIONS CHARTER SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF AN ACT OF AGGRESSION PROVIDED THAT THE SECURITY COUNCIL MAY MAKE A CONTRARY CONCLUSIVE FINDING AFTER CONSIDERING THE SURROUNDING CIRCUMSTANCES IN CONFORMITY WITH ITS POWERS AND OBLIGATION UNDER CHAPTER VII OF THE CHARTER."

4. PRELIMINARY COMMENTS ON THIS PROPOSAL BY MOST MEMBERS OF CG (INCLUDING USSR, FRANCE, MEXICO, SPAIN, AND EGYPT) WERE FAVORABLE. IN LIGHT OF APPARENT POSSIBILITY THAT THIS COULD BE CONSIDERED BASIS FOR SERIOUS NEGOTIATIONS, US REP SUGGESTED ON PERSONAL BASIS THAT, IN GIVING PROPOSAL FURTHER CONSIDERATION, DELS MIGHT THINK ALSO ABOUT INCORPORATING SOME IDEAS FROM EARLIER GUYANAN PROPOSAL SO THAT SECOND HALF OF SENTENCE WOULD READ ROUGHLY AS FOLLOWS: QUOTE PROVIDED, HOWEVER, THAT THE SECURITY COUNCIL MAY, IN CONFORMITY WITH ITS POWERS AND OBLIGATIONS UNDER CHAPTER VII OF THE CHARTER, CONCLUDE THAT A DETERMINATION TO THAT EFFECT WOULD NOT BE JUSTIFIED IN LIGHT OF OTHER RELEVANT CIRCUMSTANCES, INCLUDING ANY EVIDENCE OF THE PURPOSES OF STATES INVOLVED AND THE NATURE OF THE ACTS COMMITTED. UNQUOTE US REP ALSO COMMENTED THAT GUYANAN LANGUAGE REFERRING TO USE OF FORCE " IN CONTRAVENTION OF THE UNITED NATIONS CHARTER" WAS A USEFUL NEW ELEMENT. WE SUGGESTED (PER POSITION PAPER) THAT THIS POINT SHOULD ALSO BE INCLUDED IN A GENERAL CLAUSE FOLLOWING LIST OF ACTS, WHICH WOULD SPECIFY THAT USES OF FORCE LEGAL UNDER THE CHARTER DO NOT CONSTITUTE AGGRESSION. (COMMENT: IN PRIVATE CONVERSATION AFTER MEETING SOVIET REP SAID HE WOULD BE ABLE ACCEPT SUCH A FORMULATION. END COMMENT)

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PAGE 03 GENEVA 02274 151121 Z

5. COMMENT: NEW GUYANAN PROPOSAL FALLS FAR SHORT OF AUTOMATIC PRIORITY PRINCIPLE FRANCE, SOVIETS AND OTHERS ORIGINALLY HAD IN MIND, AND WE WERE SURPRISED AT THEIR FAVORABLE REACTION. WE BELIEVE PROPOSAL, WITH SUGGESTED CHANGES, MIGHT FORM BASIS OF ACCEPTABLE COMPROMISE ON PRIORITY AND INTENT. WE SEE FOLLOWING ADVANTAGES TO THIS APPROACH:

A) "PRIMA FACIE EVIDENCE" OF AN ACT OF AGGRESSION
WOULD RESULT FROM FIRST USE OF FORCE ONLY IF THIS USE OF
FORCE WAS IN CONTRAVENTION OF THE CHARTER. LANGUAGE THUS
LEAVES TOTALLY UNAFFECTED THE TYPICAL CASE IN WHICH THERE
IS QUESTION AS TO WHETHER THERE WAS CHARTER VIOLATION.

B) EVEN IN THE CASE OF A FIRST USE OF FORCE IN VIOLATION
OF THE CHARTER, THE SECURITY COUNCIL COULD REFRAIN FROM
MAKING A DETERMINATION OF AGGRESSION, AFTER
CONSIDERING THE "OTHER RELEVANT CIRCUMSTANCES" OF THE
CASE. THIS IS AN ADMISSION WHICH WE WOULD HAVE THOUGHT
INCONVEIVABLE FROM PROPONENTS OF PRIORITY PRINCIPLE. WE NOTE IN
ADDITION THAT, EVEN IN THIS VERY LIMITED CONTEXT (I. E.,
CASE WHERE CHARTER VIOLATION ALREADY SHOWN), THIS APPROACH
WOULD EMPLOY "PRIMA FACIE" CONCEPT, AN EXTREMELY
WEAK FORM OF PRESUMPTION WHICH TYPICALLY DROPS OUT OF
CONSIDERATION ENTIRELY ONCE ANY EVIDENCE TO THE CONTRARY, NO
MATTER HOW WEAK, HAS BEEN PRESENTED.

6. WE PLAN WITHHOLD COMMENT UNTIL FURTHER REACTIONS
AVAILABLE. BASSIN

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